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No. 88-2041

In the Supreme Court of the United States

OCTOBER TERM, 1989

EVERETT A. SISSON, PETITIONER

v.

BURTON B. RUBY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

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QUESTIONS PRESENTED

The United States will address the following questions:

1. Whether the Limitation of Liability Act applies to state-created liabilities arising out of torts having no significant relationship to traditional maritime activity.

2. Whether, in determining the applicability of the Limitation of Liability Act, this Court should reconsider its decision in *Richardson* v. *Harmon*, 222 U.S. 96 (1911).

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INTEREST OF THE UNITED STATES

The United States is frequently involved in proceedings arising from the Limitation of Liability Act. The United States is entitled to the benefit of the Act if it is sued as an owner of a vessel. 46 U.S.C. App. 746, 789 (Supp. IV 1986). See *Eastern Transp. Co.* v. *United States*, 272 U.S. 675, 690-691 (1927). The United States may also assert claims as to which a vessel owner seeks to invoke the Act. *E.g., States Steamship Co.* v. *United States*, 259 F.2d 458 (9th Cir. 1958). Finally, the United States may be a co-defendant with a vessel owner who seeks to limit liability under the Act; in such a case, the amount of the government's liability to a third party may turn on whether the vessel owner may limit his liability. Cf. *Republic of France* v. *United States*, 290 F.2d 395 (5th Cir. 1961). The United States has been involved in litigation in which the owner of a

recreational vessel has sought to limit liability. See *Carpenter* v. *United States*, 710 F. Supp. 747 (D. Nev. 1988).

In connection with the Court's consideration of the petition, the Solicitor General was invited to and did file a brief expressing the views of the United States.

STATEMENT

1. Originally enacted in 1851, the Limitation of Liability Act, 46 U.S.C. App. 181 *et seq.*, provides that "[t]he liability of the owner of any vessel" for "any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not * * * exceed the amount or value of the interest of such owner in such vessel, and her freight then pending."[1] An owner who wishes to enforce his rights under the Act "may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions" of the Act. 46 U.S.C. App. 185.[2] In addition to filing a complaint under the Act, the owner must either deposit with the court a sum equal to the value of the vessel and pending freight or transfer his interest in those assets to a trustee. *Ibid.*; see Fed. R. Civ. P. Supp. F(1).

When an owner has complied with these requirements, "all claims and proceedings against the owner or the

[1] 46 U.S.C. App. 183. Unless otherwise noted, all citations to the Appendix to Title 46 of the United States Code are to Supplement IV (1986) of the Code.

[2] Federal jurisdiction over such a proceeding is exclusive. See *Providence & New York S.S. Co.* v. *Hill Mfg. Co.*, 109 U.S. 578, 594-595 (1883). This Court established the procedures for limitation proceedings when, in connection with its decision in *Norwich Co.* v. *Wright*, 80 U.S. (13 Wall.) 104 (1871), it issued "Supplementary Rules of Practice in Admiralty." The same basic procedures—albeit with some modifications reflecting amendments to the statute and the unification in 1966 of the law and admiralty "sides" of the district courts—have been carried forward in Supplemental Rule F of the Federal Rules of Civil Procedure.

owner's property with respect to the matter in question" are stayed Fed. R. Civ. P. Supp. F(3); see 46 U.S.C. App. 185. Upon application by the owner, the district court in which the limitation proceeding has been commenced is empowered to "enjoin the further prosecution of any action or proceeding against the [owner] or the [owner's] property with respect to any claim subject to limitation in the action." Fed. R. Civ. P. Supp. F(3).

When a complaint has been filed under the Act, the district court issues a notice to "all persons asserting claims with respect to which the complaint seeks limitation, admonishing them to file their respective claims [in that court]." Fed. R. Civ. P. Supp. F(4). In the classic limitation of liability situation, in which there are multiple claims against the owner and the total amount sought exceeds the value of his interest in the vessel, the district court is empowered to adjudicate all questions presented by the Act and the underlying claims. That court has jurisdiction to determine whether the owner is entitled to the statutory limitation of liability—an issue that often turns on whether the casualty was within his "privity or knowledge" and whether and in what amount the owner is liable to each claimant. See G. Gilmore & C. Black, *The Law of Admiralty* § 10-17 (2d ed. 1975). If the owner establishes his entitlement to the benefits of the Act, the court apportions the value of the vessel and pending freight among the successful claimants.[3]

[3] The Act has been construed to preserve the claimants' choice of forum for their claims in some circumstances. In cases in which there is only a single claimant or it has been established that the total value of the claims against the owner does not exceed the value of the vessel and pending freight, claimants are generally allowed to adjudicate the owner's liability in the courts in which they commenced their actions against the owner. See *Langnes* v. *Green*, 282 U.S. 531 (1931); *Lake Tankers Corp.* v. *Henn*, 354 U.S. 147 (1957). If the district court determines that the vessel owner is not entitled to limitation, it retains jurisdiction to hear the merits of the underlying claims. *Hartford Accident & Indemnity Co.* v. *Southern Pac. Co.*, 273 U.S. 207 (1927). However, the claimants are ordinarily

The Limitation of Liability Act does not itself confer jurisdiction on the federal courts. However, in *Norwich Co.* v. *Wright*, 80 U.S. (13 Wall.) 104 (1871), this Court held that the grant of admiralty and maritime jurisdiction to the district courts, 28 U.S.C. 1333, empowers those courts to entertain proceedings under the Act. The courts' jurisdiction to conduct proceedings under the Act is as broad as, but no broader than, the liabilities that are subject to limitation.

One of the questions in this case is whether and to what extent those liabilities include state-law liabilities arising from torts that would not otherwise be within the admiralty and maritime jurisdiction of the federal courts. In 1886, in *Ex parte Phenix Ins. Co.*, 118 U.S. 610 (1886), this Court held that a federal district court lacked jurisdiction to limit an owner's liability for non-maritime torts—*i.e.*, those torts giving rise to claims that, apart from the Limitation of Liability Act, would not fall within the court's admiralty and maritime jurisdiction. Twenty-five years later, however, in *Richardson* v. *Harmon*, 222 U.S. 96, 106 (1911), the Court held that an 1884 amendment to the Limitation of Liability Act (now codified at 46 U.S.C. App. 189) extended the statute to "all claims * * * whether the liability be strictly maritime or from a tort non-maritime." Thus, the Court concluded, the Act and the federal courts' jurisdiction to administer it were not restricted to torts that would otherwise be subject to adjudication in admiralty.

This case again presents the issue addressed in *Ex parte Phenix* and *Richardson*, albeit in an altered setting. In the decades since *Richardson*, there have been significant developments in the scope of federal admiralty jurisdiction. With the enactment in 1948 of the Exten-

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entitled to resume their actions, if they choose. *In re Wood*, 230 F.2d 197 (2d Cir. 1956).

The Limitation of Liability Act may also be pleaded as a defense to an action to recover against the shipowner. See *The "Scotland"*, 105 U.S. 24, 34-35 (1881).

sion of Admiralty Jurisdiction Act, 46 U.S.C. App. 740, Congress has enlarged the territorial scope of that jurisdiction to encompass formerly non-maritime torts of the type specifically at issue in *Ex parte Phenix* and *Richardson*—*i.e.*, injuries by vessels on navigable waters to persons or property on land. In *Executive Jet Aviation, Inc.* v. *City of Cleveland*, 409 U.S. 249 (1972), and *Foremost Ins. Co.* v. *Richardson*, 457 U.S. 668 (1982), this Court established that a wrong occurring on navigable waters must also have a significant relationship to traditional maritime activity in order to qualify as a maritime tort within the admiralty jurisdiction. In light of these developments, the Court is again called upon to consider whether standards governing the availability of federal admiralty jurisdiction over claims arising in tort are also applicable in determining the scope of the Limitation of Liability Act.

2. Petitioner Everett A. Sisson was the owner of the Ultorian, a 56-foot pleasure yacht. On September 24, 1985, the Ultorian caught fire while docked at the Washington Park Marina in Michigan City, Indiana. The yacht was destroyed, and the fire caused extensive damage to the marina and to other vessels in the vicinity. The owners of the marina and the damaged vessels estimate that their losses exceed $275,000. Pet. App. 1a-2a, 25a.

Petitioner commenced this action in federal district court to obtain the benefits of the Limitation of Liability Act. Alleging that the fire had occurred without petitioner's privity or knowledge, the complaint sought a judgment enjoining the pursuit of claims against petitioner for damages arising from the fire, adjudicating petitioner's liability on those claims, limiting petitioner's total liability to the value of his interest in the Ultorian after the casualty (approximately $800), and dividing that sum among any successful claimants. The complaint invoked the admiralty and maritime jurisdiction of the United States. Compl. ¶¶ 8, 10, 13, prayer.

The district court dismissed the complaint for lack of subject matter jurisdiction, and the court of appeals affirmed. The court of appeals first held that the casualty involved in this case—a fire that began in the Ultorian's washer/dryer—did not have the "significant relationship to traditional maritime activity" required under *Executive Jet* and *Foremost* for the exercise of admiralty jurisdiction. Pet. App. 2a-14a.[4]

The court also held that the Limitation of Liability Act did not provide an independent basis of federal jurisdiction. The panel acknowledged that *Richardson* had allowed recovery for non-maritime torts, but questioned the continuing applicability of that case. Pet. App. 16a. In its view, the Extension of Admiralty Jurisdiction Act "eliminate[d] the need and reason for [*Richardson*]," *ibid.* Moreover, the court observed, to uphold admiralty jurisdiction in this case "would be contrary to the policy of *Executive Jet* and *Foremost*," *id.* at 18a. "[W]hen a cause of action in tort does not bear any connection to traditional maritime activity, there is no justification for allowing the Limitation of Liability Act—which provides for a practice apparently defensible only in a traditional maritime context—to provide an independent basis for admiralty jurisdiction." *Ibid.*

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[4] The court of appeals interpreted this Court's decisions as confining the admiralty jurisdiction in tort cases "either to cases directly involving commercial maritime activity, or to cases involving exclusively non-commercial activities in which the wrong (1) has a potentially 'disruptive impact' on maritime commerce and (2) involves the 'traditional maritime activity' of navigation." Pet. App. 8a. In the court's view, the present case, which involved a fire at a marina for recreational vessels, did not satisfy that jurisdictional test.

Our brief does not address the question of the correctness of this holding by the court below.

SUMMARY OF ARGUMENT

The provisions of the Limitation of Liability Act that define its scope are phrased in very broad terms. A section of the Act originally enacted in 1851 limits a vessel owner's liability for "any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture" to the amount or value of the owner's interest in the vessel. 46 U.S.C. App. 183. In 1884, Congress provided that an owner's liability would not exceed the proportion of "any or all debts and liabilities" that his share of the vessel bears to the whole. 46 U.S.C. App. 189.

Richardson suggests that the language of the second of these enactments—"any or all debts and liabilities"—should be applied literally, so as to encompass liabilities arising from all maritime and non-maritime torts. Thus, under this rationale, the Act would apply to the facts in this case even if this Court determined that it involved only a non-maritime tort. We believe, however, that *Richardson* should be reconsidered and that the statute should be construed to be coterminous with the remainder of the system of maritime law of which it is a part. In view of its history and the niche that it occupies in federal law, the Limitation of Liability Act is most plausibly construed as incorporating established limits on the system of admiralty and maritime law.

A. From its inception, the Limitation of Liability Act has been understood as a statutory addition to the system of admiralty and maritime law that is implicit in Article III's extension of the federal judicial power to "all Cases of admiralty and maritime Jurisdiction." In its earliest decisions construing the Act, this Court recognized that the principle of limited liability had originated in the maritime codes of European nations, and the Court referred to that body of preexisting law in resolving a number of issues presented by the Act. The Court also held that federal courts, sitting in admiralty, would be principally responsible for administering the Act.

When in the 19th century the Act's constitutionality was challenged on the ground that it exceeded Congress's authority under then-prevailing conceptions of the Commerce Clause, the statute was sustained as an exercise of Congress's authority, inherent in Article III, to modify maritime law. Not surprisingly, therefore, this Court held initially that the Act had the same scope as the pre-existing system of maritime law to which the principle of limited liability had been added.

B. *Richardson* departed from this settled understanding of the relationship between the Limitation of Liability Act and federal maritime law. It construed the Act, as amended in 1884, to extend the statutory principle of limited liability, and with it the admiralty jurisdiction of the federal courts in limitation proceedings, to all liabilities that might be imposed upon a vessel owner, whether or not those liabilities would otherwise have been cognizable in admiralty. Although Congress has constitutional authority to modify maritime law (and thereby to expand to some degree the admiralty jurisdiction of the federal courts), we question whether the 1884 enactment can fairly be construed to effect the very substantial extension of admiralty jurisdiction that *Richardson* attributed to it. The language and legislative history of the statute suggest no such sharp break from the pre-existing understanding.

C. In practice, decisions since *Richardson* have not applied the Limitation of Liability Act to "any or all debts and liabilities" that vessel owners may incur. Lower federal courts have repeatedly declined, we believe correctly, to limit liabilities with respect to casualties on non-navigable waters to which maritime law does not apply. Those courts have recognized that literal adherence to *Richardson's* interpretation of the Limitation of Liability Act is inappropriate—and that some link must exist between that Act and the traditional concerns of maritime law. It is fair to reconsider, therefore, whether the Act is best understood to incorporate established limits on maritime tort law rather than to embody its own,

heretofore unarticulated, standards for determining the liabilities subject to limitation.

D. Developments in the law of admiralty have undercut the basis for *Richardson's* holding. At the time of that decision, restricting the Limitation of Liability Act to maritime torts would have exposed shipowners to unlimited liability for a large class of torts that were then considered non-maritime—those involving injuries to persons and property on land—that would foreseeably arise from accidents on navigable waters. Since *Richardson*, however, the Extension of Admiralty Jurisdiction Act, 46 U.S.C. App. 740, has extended federal admiralty and maritime jurisdiction to encompass those accidents. In addition, the Court's recent decisions have stressed that the boundaries of federal admiralty jurisdiction should reflect the need for uniform federal admiralty law, but should also avoid unnecessary encroachment on state law. The requirement that a tort bear some nexus to traditional maritime activity reflects that concern. These developments call into serious question any rule that the owner of a vessel may invoke federal law to limit his liability for a "non-maritime" tort—a term now understood to embrace tortious conduct that lacks any "significant relationship to traditional maritime activity."

ARGUMENT

THE LIMITATION OF LIABILITY ACT SHOULD BE CONSTRUED NOT TO ENCOMPASS STATE-CREATED LIABILITIES ARISING FROM TORTS THAT LACK A SIGNIFICANT RELATIONSHIP TO TRADITIONAL MARITIME ACTIVITY

A. Until *Richardson*, The Limitation Of Liability Act Was Understood To Be Coextensive With The System Of Admiralty And Maritime Law Of Which It Was A Part

The Limitation of Liability Act of 1851 defined the liabilities subject to limitation only in the most general terms. On this and other points, the Act was only an outline that "laid down a few general principles and propositions, and left it to the courts to enforce them and carry them into practical effect." *Providence & New York S.S. Co.* v. *Hill Mfg. Co.*, 109 U.S. 578, 590 (1883).[5] In its early decisions interpreting this broadly

[5] The Act was passed with no debate in the House and less than a day's discussion in the Senate. See Cong. Globe, 31st Cong., 2d Sess. 713-720, 738, 776-777 (1851). See also H.R. Rep. No. 33, 31st Cong., 1st Sess. (1850) (reporting a similar bill during the previous session). Discussion of the bill on the floor of the Senate suggests that its purpose was to place American commercial shipping on an equal footing with English and other foreign competition. Senator Davis explained (Cong. Globe, 31st Cong., 2d Sess. 714 (1851):

> I will only say, that [the proposed legislation] is the adoption of a system which has been several years in operation in England, with certain alterations merely, as I understand it, to adapt it to the affairs of this country, and nothing more. It is simply placing our mercantile marine upon the same footing as that of Great Britain. We are carriers side by side with that nation, in competition with them, and we cannot afford very well to give them any great advantage over us without affecting our interest very seriously.

Accord, *e.g.*, *id.* at 715 (remarks of Sen. Hamlin), 716-717 (remarks of Sen. Rantoul). See also H.R. Rep. No. 33, *supra*.

Notwithstanding the emphasis on the English origins of the legislation, this Court subsequently construed it to differ from the

phrased statute, this Court relied heavily upon the Act's antecedents in the maritime laws of foreign nations, placed the Act squarely within our system of federal maritime law, and ultimately tied the scope of the Act to the boundaries of that system.

The first major case involving the Act was *Norwich Co.* v. *Wright*, *supra*; that case presented the questions whether the Act applied to damages arising from collisions, whether the owner's interest in a vessel was to be measured before or after the casualty, and what judicial proceedings were appropriate to enforce an owner's rights under the Act. After tracing the history of limited liability in the maritime codes of continental European nations and similar English statutes, 80 U.S. (13 Wall.) at 116-120,[6] the Court held that the Act followed the "general maritime law" in applying the concept of limited liability to all damages—not just damages for injury to cargo—arising from a collision. *Id.* at 121. Similarly, the Court held that the Act "adopt[ed] the rule of that [maritime] code" that an owner's interest in a vessel was to be valued after the event giving rise to the owner's liability. *Id.* at 127.[7]

In keeping with the Act's origins in the maritime codes of foreign nations, the Court also assigned responsibility for its implementation to federal admiralty courts. The Court explained (80 U.S. (13 Wall.) at 123-124 (emphasis omitted)):

English model in several respects. See *Norwich Co.* v. *Wright*, 80 U.S. (13 Wall.) 104, 124, 127 (1871); *The "Benefactor"*, 103 U.S. 239, 243, 246-247 (1880); *Providence & New York S.S. Co.* v. *Hill Mfg. Co.*, 109 U.S. 578, 597 (1883).

[6] See also *The Main* v. *Williams*, 152 U.S. 122, 126-128 (1894); *The "Scotland"*, 105 U.S. 24, 28-29 (1881).

[7] In England, a shipowner had been required to post the value of the vessel and freights as of the time of a casualty—*i.e.*, before it was damaged. The adoption of the rule of the European maritime codes meant that the owner's liability—as this case reflects—would often be limited to the value of a vessel that had been sunk, lost, or severely damaged. See *The "Benefactor"*, 103 U.S. 239, 246-247 (1880); *The City of Norwich*, 118 U.S. 468, 490-493 (1886).

> The act does not state what court shall be resorted to, nor what proceedings shall be taken; but that the parties, or any of them, may take "the appropriate proceedings in any court, for the purpose of apportioning the sum for which, &c." Now, no court is better adapted than a court of admiralty to administer precisely such relief. * * * Congress might have invested the Circuit Courts of the United States with the jurisdiction of such cases by bill in equity, but it did not. It is also evident that the State courts have not the requisite jurisdiction. Unless, therefore, the District Courts themselves can administer the law, we are reduced to the dilemma of inferring that the legislature has passed a law which is incapable of execution. This is never to be done if it can be avoided. We have no doubt that the District Courts, as courts of admiralty and maritime jurisdiction, have jurisdiction of the matter * * *.

The Court issued Supplementary Rules of Practice in Admiralty to detail procedures to be followed in such cases. See G. Gilmore & C. Black, *supra*, § 10-14.

In later cases, the Court emphasized not only that the Act had been patterned after maritime law abroad, but also that it should be understood as a statutory addition to the system of federal maritime law implicit in Article III's extension of judicial power to "all Cases of admiralty and maritime Jurisdiction." U.S. Const. Art. III, § 2.[8] For instance, in *The "Scotland"*, 105 U.S. 24, 29, 30

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[8] This provision is now understood to encompass three grants of constitutional authority (*Romero* v. *International Terminal Operating Co.*, 358 U.S. 354, 360-361 (1959)):

> (1) It empowered Congress to confer admiralty and maritime jurisdiction on the "Tribunals inferior to the supreme Court" which were authorized by Art. I, § 8, cl. 9. (2) It empowered the federal courts in their exercise of the admiralty and maritime jurisdiction which had been conferred on them, to draw on the substantive law "inherent in the admiralty and maritime jurisdiction," * * * and to continue the development of this law within constitutional limits. (3) It empowered Congress to revise and supplement the maritime law within the limits of the Constitution.

This conception of the grant of admiralty jurisdiction in Article III was firmly established when the Court was determining the place of the Limitation of Liability Act in federal law. See *The Lottawanna*, 88 U.S. (21 Wall.) 558, 572-578 (1875).

(1881), a case involving the Act's applicability to foreign vessels, the Court outlined the sources of federal maritime law and found that the Act "declares the rule which the law-making power of this country regards as most just to be applied in maritime cases."

In *Providence & New York S.S. Co.* v. *Hill Mfg. Co.*, 109 U.S. 578 (1883), the Court upheld federal authority to stay state court proceedings in deference to a pending federal proceeding to limit a vessel owner's liability. The Court reasoned that the Act was a legitimate exercise of Congress's "power to make changes in the maritime law of the country," *id.* at 589; that the statutory principle of limited liability was a subject "preeminently of admiralty jurisdiction" since it was "nothing more than the old maritime rule administered in courts of admiralty in all countries except England, from time immemorial," *id.* at 593; and that even "if this were not so, the subject-matter itself is one that belongs to the department of maritime law." *Id.* at 593-594. Based upon this understanding of the Act, the Court concluded that a federal district court "has full jurisdiction and plenary power, as a court of admiralty, to entertain and carry on all proper proceedings for due execution of the law, in all its parts; and its decrees, in cases subject to its jurisdiction, are valid and binding in all courts and places." *Id.* at 599.

Having characterized the Limitation of Liability Act as a statutory addition to the Nation's system of maritime law, administered by federal admiralty courts, the Court next concluded, not surprisingly, that the Act was coextensive with the territorial limits of the admiralty jurisdiction. In *Ex parte Phenix*, *supra*, the owner of a

steamer sought to limit its liability for multiple claims arising from a fire caused by sparks from the steamer's smokestack. Because the fire occurred on land, claims for resulting damages fell outside federal admiralty jurisdiction as then defined. 118 U.S. at 618-619. See *The Plymouth*, 70 U.S. (3 Wall.) 20, 35 (1865). The Court noted that the Act "[did] not purport to confer any jurisdiction upon a District Court" and referred only to "any court of competent jurisdiction," "leaving the question of such competency to depend on other provisions of law." 118 U.S. at 617. It held, accordingly, that neither the Act nor the Supplementary Admiralty Rules extended the admiralty jurisdiction of the district courts to a proceeding to limit a vessel owner's liability for a non-maritime tort. The Court added that nothing in its earlier decisions "support[ed] the view that a District Court can take jurisdiction in admiralty of a petition for a limitation of liability where it would not have had cognizance in admiralty originally of the cause of action involved." *Id.* at 624.[9]

In *Butler* v. *Boston & Savannah Steamship Co.*, 130 U.S. 527 (1889), the Court held that the Act could

[9] As amicus Maritime Law Association notes (MLA Br. 13), the Court stopped short of a square holding that the Limitation of Liability Act had no possible application to non-maritime torts, as it reserved the question "whether or not the statutory limitation of liability extends to the damages sustained by the fire in question, so as to be enforceable in an appropriate court of competent jurisdiction." 118 U.S. at 625. However, that reservation was inconsistent with cases decided before and after *Ex parte Phenix*. In *Norwich Co.* v. *Wright*, 80 U.S. (13 Wall.) at 123, the Court had foreclosed the possibility of state court jurisdiction, saying that "State courts have not the requisite jurisdiction" to administer the Act. In *Richardson*, moreover, this Court understood *Ex parte Phenix* to have held that non-maritime liabilities were beyond the bounds of the Limitation of Liability Act prior to the 1884 enactment. The Court observed that the original Act "embraced liabilities for maritime torts, but excluded both debts and liabilities for non-maritime torts," 222 U.S. at 103, and it construed the 1884 Act as having enlarged the category of liabilities subject to the Act, not as having filled a jurisdictional gap.

properly be applied to limit a claim under a state wrongful death statute arising from a sinking in navigable waters near Martha's Vineyard. After reiterating that Congress had authority to amend and modify maritime law "within these boundaries and limits" of the admiralty and maritime jurisdiction, the Court continued (*id.* at 557):

> It being clear, then, that the law of limited liability of shipowners is a part of our maritime code, the extent of its territorial operation (as before intimated) cannot be doubtful. It is necessarily coextensive with that of the general admiralty and maritime jurisdiction, and that by the settled law of this country extends wherever public navigation extends—on the sea and the great inland lakes, and the navigable waters connecting therewith.

Since the sinking in *Butler* occurred in navigable waters, the Court concluded, the state's wrongful death remedy could not "prevent the full operation of the maritime law on those waters" and the state-created liability was subject to limitation. *Ibid.*[10]

[10] *Butler* reserved the question whether state law could create a remedy enforceable in admiralty for injuries incurred on navigable waters. 130 U.S. at 558. This Court subsequently eliminated that doubt, in two steps, in favor of recognition of such remedies in admiralty. First, in *The Hamilton*, 207 U.S. 398 (1907), the Court concluded that, whether or not an action to recover on a state wrongful death remedy could be initiated in a federal admiralty court, such a remedy could be recognized in a limitation of liability proceeding. The Court explained that state law created "an *obligatio*, a personal liability of the owner [of a vessel] to the claimants" which "admiralty would not disregard, but would respect * * * when brought before it in any legitimate way" and that, in a limitation of liability proceeding, "all claims to which the admiralty does not deny existence must be recognized." *Id.* at 405-406. Accord *La Bourgogne*, 210 U.S. 95, 138-139 (1908). Second, in *Western Fuel Co.* v. *Garcia*, 257 U.S. 233, 240-242 (1921), the Court held that when state law provided a wrongful death remedy applicable to an admiralty cause of action, the remedy could be enforced in a federal admiralty suit. (Later, in *Moragne* v. *States Marine Lines, Inc.*, 398

In *In re Garnett*, 141 U.S. 1 (1891), this same understanding of the Limitation of Liability Act served as the basis for this Court's rejection of a constitutional challenge to the Act's application to vessels allegedly involved only in intrastate commerce. Referring to an 1886 amendment to the Act extending it to inland navigation, the Court explained (*id.* at 12):

> It is unnecessary to invoke the power given to Congress to regulate commerce with foreign nations, and among the several states, in order to find authority to pass the law in question. The act of Congress which limits the liability of ship owners was passed in amendment of the maritime law of the country, and the power to make amendments is coextensive with that law. It is not confined to the boundaries or class of subjects which limit and characterize the power to regulate commerce; but, in maritime matters, it extends to all matters and places to which the maritime law extends.[11]

U.S. 375 (1970), the Court recognized a federal wrongful death remedy in admiralty cases.)

Amicus Maritime Law Association argues that *Butler* and *The Hamilton* established that "claims not falling within the general maritime jurisdiction could be brought in a limitation of liability proceeding," suggesting that *Richardson* did not reflect a major change in the law. MLA Br. 18. But throughout the period prior to *Western Fuel Co.* v. *Garcia*, *supra*, it was far from clear that state wrongful death claims arising from maritime torts were outside general maritime jurisdiction. See *Western Fuel Co.* v. *Garcia*, 257 U.S. at 241 (citing preexisting authority for the conclusion it reached); *The Harrisburg*, 119 U.S. 199, 214 (1886) (reserving the question whether a state wrongful death statute could be enforced in admiralty). More fundamentally, both *Butler* and *The Hamilton* dealt with maritime torts on navigable waters, and thus in holding that state wrongful death remedies were subject to a limitation proceeding, the Court had no occasion to consider whether the Limitation of Liability Act applied outside the preexisting boundaries of admiralty law.

[11] Evidently, the Court viewed Congress's authority to prescribe rules of admiralty to be broader than its authority under the Commerce Clause. The Court had previously upheld the Act's application to the high seas under the Commerce Clause, *Lord* v. *Steamship Co.*, 102 U.S. 541 (1881), but chose not to rely on the same constitutional provision in *In re Garnett*.

It is now established that Congress has authority to enact legislation touching areas of maritime concern that effectively extend admiralty jurisdiction to accidents that might otherwise be considered non-maritime. See, *e.g.*, *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 40-41 (1943). However, that power is not without limits. See *id.* at 43. Moreover, in considering whether Congress intended, in its 19th century enactments, to extend maritime law, it should be borne in mind that the constitutional authority for such a step would have been open to debate. See *Crowell* v. *Benson*, 285 U.S. 22, 55 (1932) ("In amending and revising the maritime law, the Congress cannot reach beyond the constitutional limits which are inherent in the admiralty and maritime jurisdiction. Unless the injuries to which the Act relates occur upon the navigable waters of the United States, they fall outside that jurisdiction.").

In short, until *Richardson*, all of this Court's cases were consistent with the view that the Limitation of Liability Act was an addition to the system of maritime law that applied "to all matters and places to which the maritime law extends," but no farther.

B. The 1884 Amendment To The Limitation Of Liability Act Did Not Reflect An Intention To Extend The Statute To Non-Maritime Torts

In *Richardson* v. *Harmon*, *supra*, the Court returned to the question in *Ex parte Phenix* and reached the opposite conclusion. In *Richardson*, a steam barge had collided with a bridge, and the owners of the barge initiated a proceeding to limit their liability in federal court. The Court acknowledged that, like the casualty in *Ex parte Phenix*, the collision was a non-maritime tort and "as such not within the cognizance of an admiralty court." 222 U.S. at 101. It also recognized that the original Limitation of Liability Act would not have encompassed such a tort, noting that the 1851 enactment "embraced liabilities for maritime torts, but excluded both debts and liabilities for non-maritime torts." *Id.* at 103. However,

the Court held that Section 18 of the Act of June 26, 1884, ch. 121, 23 Stat. 57-58, "was intended to add to the enumerated claims of the old law 'any and all debts and liabilities' not theretofore included," including non-maritime tort claims. 222 U.S. at 105. "Thus construed," the Court continued, "the section harmonizes with the policy of limiting the owner's risk to his interest in the ship in respect of all claims arising out of the conduct of the master and crew, whether the liability be strictly maritime or from a tort non-maritime, but leaves him liable for his own fault, neglect and contracts." *Id.* at 106.

In our view, however, neither the language nor the legislative history of the 1884 statute supports construing it as such a sharp break with the prior understanding of the Limitation of Liability Act.

1. *The Language of the 1884 Enactment.*—A prominent admiralty treatise has said of the 1884 Act, "No doubt when more obscure statutes are drafted, the Congress will draft them, but it is difficult to believe that any future body of law makers will ever surpass this extraordinary effort." G. Gilmore & C. Black, *supra*, § 10-13, at 845. A major interpretive difficulty arose from the fact that the 1884 statute was not styled as an amendment to the Limitation of Liability Act; thus, it might have been read to supersede preexisting law, to modify it, or to clarify it without substantial change.

In *Richardson*, this Court concluded that in most respects the 1884 Act was not intended to alter the settled procedural and substantive provisions of the 1851 Act. The Court observed that the 1884 Act declared "[n]o purpose to repeal or qualify any of the terms of the existing liability law"; that the Act was "in *pari materia* with" the earlier legislation; and thus that it was unnecessary to conclude that the 1884 Act was "a repealing act as to any of the qualifications of the preceding limitations" contained in the earlier Act. 222 U.S. at 103, 105. See G. Gilmore & C. Black, *supra*, § 10-13. Nevertheless, *Richardson* concluded that the 1884 Act substantially expanded the nature of the liabilities subject to limitation.

The text of the 1884 enactment, however, does not suggest any intention fundamentally to alter the previously established relation between the Limitation of Liability Act and federal maritime law, let alone to single out that feature of the statute for a radical change. The 1851 Act limited a vessel owner's liability for, *inter alia*, "any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner" (46 U.S.C. App. 183(a)), whereas the 1884 amendment limited the shipowner's liability "to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole" (46 U.S.C. App. 189). Nothing in these two formulations suggests that the earlier enactment, but not the latter, should incorporate limitations on federal maritime jurisdiction.

2. *The Legislative History.*—The legislative history of the 1884 limitation of liability provision is entirely silent on the question whether it was intended to extend the concept of limited liability for shipowners to non-maritime torts.[12] When the provision was reported to the floor of the Senate, it was described, in modest terms, as "not so great a change as appears on the face of the law." 15 Cong. Rec. 976 (1884) (remarks of Sen. Frye).[13] Later, in a very brief exchange, one Senator

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[12] In 1884, the House and the Senate considered separate bills providing a variety of forms of relief for the shipping industry. H.R. 2228, 48th Cong., 1st Sess. (1884); S. 1448, 48th Cong., 1st Sess. (1884). Congress ultimately passed the House bill, although it was extensively amended to incorporate provisions from the Senate bill. The provision to limit shipowners' liability originated in the Senate bill. Although the proposed shipping legislation was debated at length in both Houses, the limitation of liability provision received only very brief attention on the floor of the Senate, 15 Cong. Rec. 976, 3970-3972 (1884), and none on the floor of the House. See also 15 Cong. Rec. 5440 (1884) (conference committee report).

[13] Senator Frye's remarks, though somewhat obscure, suggest that the impetus for the legislation was concern that large investors

suggested that its only purpose was to protect shipowners from contractual liabilities.[14] There is no indication that Congress considered—or meant to depart from—this Court's understanding of the scope of the 1851 Act.

In *Richardson*, the Court found support for its understanding of the 1884 enactment in a dictum in *Butler*,

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might be held responsible for the entire amount of debts incurred in the shipping ventures that they undertook with partners of lesser means and, therefore, that they should be given protection comparable to that provided by the corporate form. He stated (15 Cong. Rec. 976 (1884)):

> Section 18 limits the individual liability of a ship-owner for any and all debts and liabilities to the proportion that his individual share of the vessel bears to the whole. That is not so great change as appears on the face of the law. By statute to-day any shareholder in a vessel is liable for no more than the value of the share for any tort of the master or in case of collision or in any other way except by contract. But those provisions of the law are not generally understood. They follow the English and the French law almost word for word. There is to-day a feeling among the capitalists of this country that it is exceedingly dangerous to put capital into a ship where there may be twenty owners and only one of them really a man of wealth, and he responsible for the entire debt contracted. The English have the same limited liability provided for in this section, only in another form. They have a general law of "limited liability," by which any dozen men desiring to build a ship or a steamer can simply incorporate themselves for that single purpose, and then their liability under that act of incorporation shall be the owner's share of the vessel and no more. The bill which we report does the same thing, only in another form. It is believed that it will remove a difficulty under which our capitalists have labored, will give them courage to invest in ships, and will do a great deal more towards encouraging ship-building and ship-owning than really the law itself which we report would authorize.

Accord 15 Cong. Rec. 3650 (1884) (remarks of Sen. Frye). See also *id.* at 3970-3971.

[14] 15 Cong. Rec. 3971 (1884) (remarks of Sen. Vest):

> Mr. MILLER, of California. Why is not the provision in the Revised Statutes as it stands now sufficient?
>
> Mr. VEST. It does not apply to contracts at all, only to torts.

130 U.S. at 554, that it was "possible" that the 1884 amendment "was intended to remove all doubts of the application of the limited liability law to all cases of loss and injury caused without the privity or knowledge of the owner." However, as we have shown, the Court in *Butler* evidenced no doubt about whether the Act might extend to non-maritime torts; to the contrary, it emphasized the connection between the Limitation of Liability Act and the general scope of maritime law. The "doubts" referred to in *Butler* evidently arose from "[v]arious attempts * * * to narrow the objects of the statute," 130 U.S. at 550, even within the limits of maritime law, for instance by excluding liabilities from collisions and fire, See 130 U.S. at 550, 554. Indeed, *Butler* observed that the 1884 amendment was "explanatory of the intent of Congress in this class of legislation," *id.* at 554, thus suggesting that it was merely a clarification of the understanding of the statute that *Butler* presented in some detail.

We submit that the correctness of *Richardson's* analysis of the 1884 enactment on which it relied is, at the least, open to serious question.

C. Since *Richardson*, Lower Federal Courts Have Declined In Practice To Apply The Limitation Of Liability Act To All Non-Maritime Torts

After *Richardson*, it has often been said that "[p]roceedings by vessel owners to limit their liability as permitted by [the Limitation of Liability Act] are within the admiralty jurisdiction even if the claims limited against might not be sued upon in admiralty." 1 S. Friedell, *Benedict on Admiralty* § 225 (7th ed. 1989).[15]

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[15] See, *e.g.*, *Just* v. *Chambers*, 312 U.S. 383, 386 (1941) (Limitation of Liability Act "extends to tort claims even when the tort is non-maritime"); *Detroit Trust Co.* v. *The Barlum*, 293 U.S. 21, 44-45 (1934); *Hartford Accident & Indemnity Co.* v. *Southern Pac. Co.*, 273 U.S. 207, 217 (1927) (court of admiralty acquires the right to marshal "all claims, whether of strictly admiralty origin or not");

However, in practice, the Limitation of Liability Act has not been held to apply to all cases to which this proposition extends.

In particular, courts have refused to apply the Limitation of Liability Act to claims arising from torts on non-navigable waters, even though such claims would seem to fall within *Richardson's* expansive interpretation of the debts and liabilities subject to the Act.[16] *Richardson* held that the situs of a tort in relation to the traditional bounds of maritime law was irrelevant to the application of the Act, and its reasoning does not recognize a distinction between torts occurring on land adjoining navigable waters and those taking place elsewhere. Thus, these lower court holdings, which at best are difficult to square with *Richardson's* rationale, lend support to our view that the Limitation of Liability Act can not reasonably be applied without reference to limits on maritime law derived from other sources.

Petitioner does not refer to the cases involving torts on non-navigable waters but attempts to sidestep them by confining his attention to cases involving "non-maritime, or allegedly non-maritime torts, which occur[] upon, *or in relation to* navigable waters." Pet. Br. 37 (emphasis added). The implication is that the Act might fairly be construed to require some "relation to navigable waters," thereby preserving its inapplicability to non-navigable

The No. 6, 241 F. 69 (2d Cir. 1917); *The Rochester*, 230 F. 519, 521 (W.D.N.Y. 1916); *The Irving F. Ross*, 8 F.2d 313 (D. Mass. 1923); *In re Highland Nav. Corp.*, 24 F.2d 582, 585 (S.D.N.Y. 1927); *The Atlas No. 7*, 42 F.2d 480 (S.D.N.Y. 1930); *In re Colonial Trust Co.*, 124 F. Supp. 73, 75 (D. Conn. 1954); *The Trim Too*, 39 F. Supp. 271, 273 (D. Mass. 1941).

[16] *E.g.*, *In re Three Buoys Houseboat Vacations U.S.A., Ltd.*, 878 F.2d 1096 (8th Cir. 1989); *Marroni* v. *Matey*, 492 F. Supp. 340 (E.D. Pa. 1980); *In re Hoeser's Petition*, 227 F. Supp. 81 (W.D.N.C. 1964); *In re Madsen's Petition*, 187 F. Supp. 411 (N.D.N.Y. 1960); *In re Stephens*, 341 F. Supp. 1404 (N.D. Ga. 1965); But cf. *In re Reading's Petition*, 169 F. Supp. 165 (N.D.N.Y. 1958), aff'd, 271 F.2d 959 (2d Cir. 1959).

waters, but not to embody whatever relationship to navigable waters and other standards are required to confer admiralty jurisdiction generally. Though petitioner's suggestion conforms to the results in many, though not all, of the reported cases,[17] the statute provides no support for such an intermediate standard—somewhere between "any or all debts and liabilities," whether maritime or non-maritime, and the generally applicable standards for distinguishing between maritime and non-maritime torts. Rather than attempting to fashion such a standard, this Court, we submit, should reconsider whether the Limitation of Liability Act is coextensive with admiralty jurisdiction.

D. Other Developments Regarding The Scope Of Admiralty Jurisdiction Support Restricting The Limitation Of Liability Act To Maritime Torts

Two related developments in the area of admiralty jurisdiction since *Richardson* also support reconsideration of its construction of the Limitation of Liability Act. First, Congress has eliminated the artificial limit on admiralty jurisdiction that undoubtedly contributed to that decision. At the time *Richardson* was decided, injuries caused by vessels on navigable waters to persons and property on land fell outside admiralty jurisdiction. Thus, as *Richardson* noted, defining the Act to incorporate this gap in admiralty jurisdiction would "leave an owner subject to a large class of obligations arising from non-maritime torts," a result in conflict with the purpose of the statute. 222 U.S. at 104. The Extension of Admiralty Jurisdiction Act, 46 U.S.C. App. 740, has since enlarged admiralty jurisdiction to include "all cases of damage or injury, to person or property, caused by a

[17] In addition to this case, there are several decisions in which courts have declined to apply the Limitation of Liability Act to torts that have been determined to be non-maritime. *Lewis Charters, Inc.* v. *Huckins Yacht Corp.*, 871 F.2d 1046 (11th Cir. 1989); *Clinton Bd. of Park Comm'rs* v. *Claussen*, 410 F. Supp. 320 (S.D. Iowa 1976).

vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land." [18] Thus, reestablishing the link between the Limitation of Liability Act and admiralty jurisdiction would not change the result in *Richardson* or in other comparable cases involving damage or injury on land.

Second, this Court's recent decisions stress that the limits of admiralty jurisdiction, while reflecting the importance of uniform federal maritime law, must also avoid unnecessary encroachment on state law. In *Victory Carriers, Inc.* v. *Law*, 404 U.S. 202 (1971), for instance, the Court refused to recognize federal admiralty jurisdiction over an action by a longshoreman for damages arising from an injury on a pier. The Court noted that it was "dealing here with the intersection of federal and state law" and that an extension of federal jurisdiction would "intrude on an area that has heretofore been reserved for state law." *Id.* at 211-212. The Court concluded: "At least in the absence of explicit congressional authorization, we shall not extend the historic boundaries of the maritime law." *Id.* at 214. The requirement that a tort bear a significant relationship to traditional maritime activity also reflects an unwillingness unnecessarily to intrude on areas reserved for state law. See *Executive Jet Aviation, Inc.* v. *City of Cleveland*, 409 U.S. at 272-273. The same concern supports excluding from the Limitation of Liability Act tort claims that would otherwise be governed entirely by state law. Although permitting state law to define claims within its scope, the Act in practice may extinguish or severely limit recovery and may deny plaintiffs the opportunity to litigate in a state forum of their choice.

In view of present conceptions of federal admiralty jurisdiction, we perceive no federal maritime interest that justifies such limitations on state-created liabilities

[18] See *Victory Carriers, Inc.* v. *Law*, 404 U.S. 202, 209-210 (1971); *Gutierrez* v. *Waterman S.S. Corp.*, 373 U.S. 206, 209-210 (1963); *United States* v. *Matson Nav. Co.*, 201 F.2d 610, 613-616 (9th Cir. 1953).

arising from torts having no significant relationship with traditional maritime activities. In general, construing the Limitation of Liability Act not to encompass such liabilities would affect only state law claims arising from accidents involving vessels not on navigable waters and whatever pleasure boat accidents may be held not to have a significant relationship to traditional maritime activity. See MLA Br. 21-22.[19] The purpose of the Limitation of Liability Act, which was to encourage investment in the shipping industry, *Norwich Co.* v. *Wright*, 80 U.S. (13 Wall.) at 121; 3 A. Jenner, E. Flynn & J. Loo, *Benedict on Admiralty* §§ 6-7 (7th ed. 1989), does not support protecting vessel owners from claims of this type, particularly where the effect is to interfere with state law that would otherwise be completely outside the scope of federal maritime law.[20]

[19] Under the interpretation we propose, the Limitation of Liability Act would incorporate both judicial and statutory refinements of the admiralty and maritime jurisdiction. Thus, when Congress creates a statutory maritime liability that effectively extends the scope of admiralty jurisdiction, see, *e.g.*, *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, 318 U.S. 36 (1943) (Jones Act applies to onshore injury to deckhand on vessel), such a liability will be subject to limitation. Similarly, the Act would incorporate the expansion of jurisdiction effected by the Extension of Admiralty Jurisdiction Act and any subsequent extensions of that nature. Of course, in creating maritime liabilities, Congress may exempt them from the Limitation of Liability Act, as it has in connection with certain actions under the Death on the High Seas Act, 46 U.S.C. App. 764 (certain foreign-law claims may be brought in admiralty in the United States "without abatement in respect to the amount for which recovery is authorized, any statute of the United States to the contrary notwithstanding").

[20] Hypothesizing that a single accident may give rise to maritime and non-maritime claims, amicus Maritime Law Association suggests that our interpretation of the Act would "defeat the objectives of *concursus* [the resolution of claims against an owner in a single proceeding] and a single fund for all claims to have proceedings in different courts." MLA Br. 21. Moreover, MLA continues, even in cases involving damage inflicted solely on land, "the expertise of

Although the interpretation of the Limitation of Liability Act that we advocate is inconsistent with the reasoning of *Richardson*, we submit that the doctrine of *stare decisis* should not foreclose reconsideration of that

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an admiralty court is useful in determining the shipowner's liability and whether it is entitled to limit that liability." *Ibid.* This argument is circular. The very question at issue is whether the limited liability *concursus*, single fund, and expertise of an admiralty court should be available for non-maritime torts. Moreover, it will be rare, under modern admiralty analysis, that a maritime tort will give rise to maritime and non-maritime claims. A plaintiff injured by a maritime tort may invoke admiralty jurisdiction in seeking both remedies available under federal law and state remedies that do not unduly interfere with the characteristic features of the maritime law. *Askew* v. *American Waterways Operators, Inc.*, 411 U.S. 325, 339 (1973). Those state remedies that do interfere with maritime law are preempted, whether asserted in federal or state court. The only torts that may generate a mix of maritime and non-maritime claims would be cases in which a party could invoke a federal statutory remedy, such as the Jones Act, for what would otherwise be a non-maritime tort. Although the Court need not now consider the proper treatment of that unusual situation, we believe it would not be inappropriate to hold that the state claim is outside the scope of the Limitation of Liability Act. Cf. *Hines, Inc.* v. *United States*, 551 F.2d 717 (6th Cir. 1977).

Petitioner's amici also rely on a 1936 amendment to the Act, now codified at 46 U.S.C. App. 185, that provides that a vessel owner "may petition a district court of the United States of competent jurisdiction for limitation of liability * * *." MLA Br. 14 & n.3; American Auto Br. 21. This amendment is irrelevant to the issues before the Court. By its terms, it does not confer any jurisdiction on the district courts; its reference to a court of "competent jurisdiction" indicates that jurisdiction must be derived from some other source. See *Kansas City Power & Light Co.* v. *McKay*, 225 F.2d 924, 932-933 (D.C. Cir.) (construing virtually identical language in the Administrative Procedure Act), cert. denied, 350 U.S. 884 (1955). Further, it does not purport to define the scope of the Act. Because the Limitation of Liability Act is a part of the maritime law, federal jurisdiction to administer its terms is conferred by 28 U.S.C. 1333; that jurisdiction, however, is no broader than the liabilities subject to limitation under the Act.

case's validity as applied in the modern context. See *Patterson* v. *McLean Credit Union* 109 S. Ct. 2363, 2370-2371 (1989). As has been shown, *Richardson* itself departed from the previously settled understanding of the Act. Its interpretation of the 1884 limited liability statute is open to question, and its suggestion that liabilities are subject to limitation without any regard to the boundaries of federal maritime law has, in practice, been ignored in cases involving non-navigable waters. Significantly, there has been "intervening development of the law," through both "the growth of judicial doctrine" and "further action by Congress," that has "removed or weakened the conceptual underpinnings" of *Richardson*, and that decision is now difficult to reconcile with the contemporary understanding of the proper division between state and federal law. See *Patterson* v. *McLean Credit Union*, 109 S. Ct. at 2370-2371. Moreover, *Richardson* had no occasion to consider the precise issue presented here—whether the Limitation of Liability Act applies to an accident even if the accident falls outside admiralty jurisdiction because it bears no significant relationship to traditional maritime activity.

* * * * *

In summary, we believe that under the rationale of the *Richardson* decision, the Limitation of Liability Act would apply to the facts of this case whether or not the accident in suit involves a maritime tort. But the holding of *Richardson* should, in our view, be reconsidered for two reasons. First, the original understanding of the Limitation of Liability Act of 1851 was that the Act did not extend to non-maritime torts, and we submit that the 1884 enactment relied on in *Richardson* did not abrogate that understanding. Second, events since *Richardson*—particularly the enactment of the Extension of Admiralty Jurisdiction Act and decisions by this Court that refine the scope of admiralty jurisdiction—have further undercut *Richardson*'s validity. Thus, with respect to liability in tort, the Limitation of Liability Act should again be

held to apply only to those torts that would otherwise be within the scope of federal admiralty jurisdiction. Under this view, the applicability of the Act, and the existence of federal jurisdiction, should depend on whether the casualty at issue qualifies as a maritime tort.

CONCLUSION

For the foregoing reasons, this Court should reconsider its decision in *Richardson* v. *Harmon* and hold that the Limitation of Liability Act does not provide an independent basis for federal jurisdiction.

Respectfully submitted.

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APRIL 1990

☆ U. S. GOVERNMENT PRINTING OFFICE: 1990 262203 939